Increasing certainty in the legal parentage process

The Surrogacy Inquiry Final Report contains 47 recommendations for reforming surrogacy laws in Australia. This information sheet explains that the ALRC's recommendations, if implemented, would create two separate pathways to legal parentage and better align the law with parties' intentions.

1 The administrative pathway

Approved surrogacy arrangement
The arrangement is compliant with safeguards and approved by a Surrogacy Support Organisation or National Regulator

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Attempt to achieve a pregnancy
Once the arrangement is approved, ART service providers may assist parties to attempt to achieve a pregnancy

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Birth of the child

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Intended parents are the child's legal parents at birth
Intended parents are recognised as the child's legal parents and listed as the parents on the birth certificate

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Surrogate may apply for parentage
Surrogate may apply for a parentage order post-birth to the Federal Circuit and Family Court of Australia. The best interests of the child is the paramount consideration

2 The judicial pathway

Unapproved surrogacy arrangement
Arrangements that have not been approved by a Surrogacy Support Organisation or the National Regulator, including overseas surrogacy arrangements

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Birth of the child

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Surrogate and their partner (if any) are the child's legal parents at birth

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Intended parents apply for parentage order
Intended parents apply to the Federal Circuit and Family Court of Australia

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Court determines application
Decision takes into account all relevant considerations, giving paramount consideration to the best interests of the child

Read the Final Report and Summary Report **here**